

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

BRIAN TOCHER,

Charging Party,

-v-

DEPARTMENT OF PUBLIC HEALTH AND
HUMAN SERVICES,

Respondent.

Case No.: 0061011665

ORDER

On August 24, 2005, Brian Tocher (Tocher) filed a complaint with the Department of Labor and Industry's Human Rights Bureau (Department) alleging that the Department of Public Health and Human Services (DPHHS) discriminated based on disability when it failed to hire him for four separate Eligibility Examiner positions. Following an informal investigation, the Department determined that a preponderance of the evidence did not support Tocher's allegation of unlawful discrimination and the Department issued a Notice of Dismissal. Tocher filed objections with the Montana Human Rights Commission (Commission). The Commission considered the matter on May 9, 2006. Steven Potts appeared and argued on behalf of Brian Tocher. Francis Clinch appeared and argued on behalf of DPHHS.

The Commission will review a decision of the Department to dismiss a complaint using an abuse of discretion standard. *Mont. Code Ann. § 49-2-509(4)(2003); Admin. R. Mont. 24.9.1714(3)*. After careful and due consideration, the Commission concludes the determination of the Department to dismiss the complaint is sufficiently supported by the record and there was no abuse of discretion.

A party may ask a district court to review a decision of the Commission to affirm the dismissal of a complaint. *Admin. R. Mont. 24.9.1714(7); See also Mont. Code Ann.*

§ 2-4-702. If a charging party chooses to commence a civil action, charging party has 90 days after the receipt of this order to petition a district court, in the district where the alleged violation occurred, for the appropriate relief. *Mont. Code Ann. § 49-2-509(5) (2003); Admin. R. Mont. 24.9.1714(5)*. If a charging party fails to commence a civil action within 90 days, the claim is time barred. *Id.*

IT IS HEREBY ORDERED, that Brian Tocher's objection is **overruled**. The Commission adopts and affirms the determination of the Human Rights Bureau to dismiss the complaint.

DATED this ____ day of May 2006.

Chair Franke Wilmer
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this _____ day of May 2006.

BRIAN TOCHER
%STEVE POTTS
PO BOX 2799
GREAT FALLS MT 59403

STEVE POTTS
ATTORNEY AT LAW
PO BOX 2799
GREAT FALLS MT 59403

JOAN MILES
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
PO BOX 4210
HELENA MT 59604-4210

CAROL SEAMAN
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
OFFICE OF HUMAN RESOURCES
PO BOX 4210
HELENA MT 59604-4210

FRANCIS CLINCH
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
PO BOX 202951
HELENA MT 59620-2951

MARIEKE BECK
DEPARTMENT OF LABOR AND INDUSTRY
OFFICE OF LEGAL SERVICES
PO BOX 1728
HELENA MT 59624-1728

Montana Human Rights Bureau